

April 22, 2014

Deepak Moorjani  
5194 Los Altos Drive  
Yorba Linda, CA 92886

Re: Your Supplemental Request for Advice  
**Our File No. A-14-014a**

Dear Mr. Moorjani:

This letter supplements our previous letter dated March 4, 2014, (*Moorjani* Advice Letter, No. A-14-014) regarding the conflict-of-interest provisions under Government Code section 1090 et seq. Because the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance (*In re Oglesby* (1975) 1 FPPC Ops. 71), this letter is based on the facts presented. In addition, we do not render advice based on past conduct. (Section 1097.1(c)(2).)<sup>1</sup>

### QUESTION

Do the conflict-of-interest provisions under Section 1090 prohibit you from entering into an employment contract with the City of Beaumont as a consulting City Engineer on a part-time basis?

### CONCLUSION

No. You may enter into an employment contract with the City of Beaumont to become a part-time consulting City Engineer because, in your current capacity, you are not subject to the provisions of Section 1090.

### FACTS

You have provided us with supplemental facts to the *Moorjani* Advice Letter, No. A-14-014. The majority of those facts have not changed, so we incorporate those facts by reference in this letter. You have updated the facts in two respects: 1) rather than hire you as a full-time employee, the City of Beaumont plans to hire you on a part-time basis; and 2) you no longer

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<sup>1</sup> Because we already sent your previous request for advice to the Attorney General’s Office and the Santa Ana District Attorney’s Office as required by Section 1097.1(c)(4), we did not send this supplemental request, which contains only minor factual differences that do not affect the Section 1090 analysis.

intend to assign your rights to the promissory note under which the buyers of your former firm are making monthly payments because you will now need the extra income.

### ANALYSIS

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, “the prohibited act is the making of a contract in which the official has a financial interest.” (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) The prohibition applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

In our previous letter, we noted that a six-step analysis was normally employed to determine whether an individual has a conflict of interest under Section 1090. However, we explained that Section 1090 only applies to public officers, employees, and multi-member bodies at both the state and local level. We determined that because you no longer provided consulting services to the City of Beaumont as of September 2013, you were not subject to the provisions of Section 1090 in your current capacity. That you will now work on a part-time basis and continue to receive payments on the aforementioned note does not change this analysis.

We caution again, however, that if you do become a part-time employee of the City of Beaumont, you will likely be subject to the conflict-of-interest provisions set forth in Section 87100 of the Political Reform Act as well as those provisions under Section 1090. We therefore recommend that if you enter employment with the City on a part-time basis, you should seek our advice on any questions related to those provisions or any other provisions under the Act.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Jack Woodside  
Senior Counsel, Legal Division

JW:jgl